

**MINUTES OF THE REGULAR MEETING OF THE
COMMON COUNCIL OF THE CITY OF JASPER, INDIANA
OCTOBER 19, 2005**

A meeting of the Common Council of the City of Jasper, Indiana, was held on Wednesday October 19, 2005, in the Council Chambers of City Hall, 610 Main Street, Jasper, Indiana.

Call to Order.

Presiding Officer Mayor William J. Schmitt called the meeting to order at 7:00 p.m.

Roll Call.

Mayor William J. Schmitt	Present
Councilmembers	
John Schroeder	Present
Bradley Seger	Present
Thomas Schmidt	Present
Ambrose 'Butch' Schitter	Present
Renee Kabrick	Present
Randall Buchta	Present
Raymond Howard	Present
City Attorney Sandra Hemmerlein	Present
Clerk-Treasurer Juanita S. Boehm	Present

Clerk-Treasurer Juanita Boehm announced that in order to have a quorum for the meeting, a majority of the members of the legislative body must be in attendance. All seven members were in attendance; therefore, there was a quorum for the meeting.

Mayor Schmitt then invited all those present to recite the Pledge of Allegiance.

Approval of the Minutes

The following minutes were distributed to and examined by the Council:

1. September 21, 2005 regular monthly common council meeting.
2. September 21, 2005 6:50 p.m. public hearing regarding the petition of Kimball International Inc. to rezone 4.63 acres located west of Dispatch Road from I-1 to I-B.

A **motion** was made by Councilmember Ambrose Schitter and seconded by Councilmember Thomas Schmidt to approve the minutes as presented. Motion carried 7-0.

Utility Service Board. Utility Service Board Chairman Greg Krodel presented a report of the regular monthly meeting held on October 17, 2005. Copies of the minutes are supplied to each council member.

2006 Holidays. Mayor Schmitt presented a proposed list of the City of Jasper 2006 holidays and the dates they would be observed.

A **motion** was made by Councilmember Ambrose Schitter and seconded by Councilmember Randall Buchta to approve the 2006 Holiday Schedule as presented. Motion passed 7-0.

Smoke-free building issue. Mayor Schmitt asked the Council for their views on the smoke-free draft ordinance that City Attorney Hemmerlein had prepared for them at their directive. Councilmember Ambrose Schitter stated that he thought the ordinance was far too restrictive. He thought it should be a matter of choice as regards to private clubs, restaurants and bars. He said where this law has been enacted, private clubs have said revenues are down.

Councilmember Renee Kabrick asserted that this was a public health issue and could see no distinction between bars and restaurants and other places of business. She also stated that this was the kind of ordinance that people had come to her and requested. The only changes she would make would possibly be in implementation, in that those businesses that would be most impacted would be given more time to change. Councilmember Ambrose Schitter agreed it was a public health issue, and if the whole state of Indiana or the federal government would back this, he would be all for it, but he could not approve this when it meant singling out just one municipality in Dubois County. Councilmember Bradley Seger stated that this would mostly affect bars, and he thought this would create an unfair environment for the city's bars when the other municipalities in the county permitted smoking. Councilmember Renee Kabrick said, "So much for Jasper being the tradition in progress". Councilmember Bradley Seger stated that he did not consider phasing in as being less restrictive.

Councilmember John Schroeder stated that he could not pass this ordinance and probably no such ordinance. He didn't think local government should take away these rights. He said many restaurants have already made their dining rooms smoke-free. Councilmember Bradley Seger asked the Mayor what the plan was for enforcing this ordinance. Mayor Schmitt responded that there was no particular plan at the moment, but he would like to see it to be self-enforcing. Councilmember Bradley Seger also asked who would be fined, the business owner or the smoker. City Attorney Sandra Hemmerlein responded that both could be fined, especially if the business owner allowed the smoking. There followed some discussion about no smoking at outdoor facilities such as sports arenas and stadiums.

Mayor Schmitt advised on reading the draft ordinance line by line to see what was acceptable or not and asked if there were a majority of Councilmembers who could pass some kind of smoke-free ordinance. Councilmember Bradley Seger said he could consider passing one that was not so restrictive. Councilmembers Bradley Seger and Raymond Howard both said they were torn about the issue because they both hate smoking but don't like laws that take away people's rights. Councilmember Thomas Schmidt said he could support some kind of ordinance and asked if it would be possible to have a trial run. Councilmember Renee Kabrick surmised that if the county sees Jasper doing this, the county might follow. She said that this is what happened in Bloomington and Monroe County.

Councilmember Raymond Howard stated that he felt it was his business to take care of people's health. Mayor Schmitt suggested businesses post warning signs about entering a place of business that permits smoking. He said that this would be a way of protecting people.

Councilmember Raymond Howard stated that he could support some form of smoke-free ordinance. He said he surveyed smokers in Jasper bars to see if they would go to other county bars if Jasper enacted a smoke-free ordinance, and the response was that most still want to support Jasper businesses. He also stated that he had asked a couple of franchised restaurants about revenues in other cities that enacted smoke-free ordinances and was told that there was no significant increase or decrease in revenues. City Attorney Hemmerlein read some excerpts from the Indianapolis ordinance, which is not as restrictive. She said she will give each Councilmember a copy of the Indianapolis ordinance, or a similar ordinance that is not as restrictive, to use as a comparison. Mayor Schmitt asked if anyone wanted to make a motion on this draft ordinance but no one did. Mayor Schmitt advised Councilmembers to determine what they could live with and what not. City Attorney Hemmerlein will wait to hear suggestions from Councilmembers and will draft an ordinance from those responses.

Rezoning Proposal/Ordinance No. 2005-20. Mayor Schmitt sought consideration of Paul E. Schmitt, Patricia E. Kiefer, Co-Personal Representatives of the Estate of Othmar W. Schmitt, Jerome H. Kerstiens and Doris A. Kerstiens' proposal to rezone 40 acres located at the northeast and northwest corners of the intersection of County Road 400 North and Portersville Road from R-R (Rural Residential) to PUD Planned Urban Develop.

Thereafter, a **motion** was made by Councilmember Ambrose Schitter and seconded by Councilmember Raymond Howard to accept the proposal to rezone 40 acres located at the northeast and northwest corners of the intersection of County Road 400 North and Portersville Road from R-R to PUD and adopt the rezoning ordinance for such property.

Mayor Schmitt explained that the rezoning request had been tabled at the August and September council meetings because of sanitary sewer lift station issues. The Utility Service Board has since addressed those issues.

Kurt and Clare Bies, 4409 N. Portersville Road, presented a petition that most of the adjoining neighbors had signed. Mr. Bies stated that they were concerned about the severity of the changes that were being proposed. He said ten days is not enough time for a group to arrange a protest when a proposed development goes before the Planning Commission. He said that changing the zoning by three levels would allow the developer to make money while the value of the present neighbors' property would decrease. He said because the land was zoned Rural Residential, current residents felt there was some certainty the zoning would remain that way. He was also concerned about traffic on the Portersville Road. He said that when the Portersville Bridge opens up, the traffic will triple on Portersville Road, and this development will create additional traffic. He said the development will change the density of the area.

Councilmember Ambrose Schitter stated that in order for the city to grow, it has to expand, and the north side of town is the way the city is growing. He said the way the tract is set out would protect the houses along Portersville Road and doesn't see anything wrong with the development. Councilmember Renee Kabrick asked Mr. Bies about the petition. Mr. Bies read off some names from the petition. Clare Bies said they're not against development, but are concerned about the size of the lots with this planned development. Councilmember Ambrose Schitter noted that the Planning Commission recommended the rezoning to the Council, but the proposed plat still has to go before the Planning Commission. Councilmember Bradley Seger reported that he had received phone calls about the lot size, but did not receive any phone calls before the Planning Commission meeting and that this opposition should have gone to the Planning Commission. City Attorney Hemmerlein stated that all proper notices were given. There followed some discussion about the plat.

Al Mehringer, representative Kerstiens Corporation, contended that if there had been any real issues, the council would have heard about them at the public hearing. Mr. Mehringer asserted that Kerstiens Corporation had done everything properly and legally. He said the developer is willing to buy property, re-build and widen Portersville Road and make it safer for children, and is not dropping three zoning levels. He asserted that this is a good subdivision that will blend in with the area. Councilmember Renee Kabrick asked what the difference was from RR to R-1. City Attorney Hemmerlein read the zoning ordinance requirements for each and commented that the main difference is lot size and set backs.

Doug Lukemeyer, Lukemeyer Realty, said he understood the Bies' concerns, but Jasper is splitting at the seams and growing and needs to have affordable housing. He said the development will have nice homes. Mayor Schmitt then said it was time to call for the vote.

The council unanimously approved the motion 7-0. Mayor Schmitt stated that the ordinance would be referenced Ordinance No. 2005-20.

Ordinance No. 2005-36 AN ORDINANCE AMENDING SECTION 4(2) OF ORDINANCE NO. 546, ENTITLED 'AN ORDINANCE PROVIDING FOR A UNIFORM CODE FOR TRAFFIC UPON THE PUBLIC STREETS OF THE CITY OF JASPER, INDIANA'—PARKING PROHIBITED ON CERTAIN DESIGNATED STREETS.

Ordinance No. 2005-36 prohibits parking on 12th Avenue from Kimball Blvd. to Old Huntingburg Road.

Upon motion by Councilmember Thomas Schmidt, seconded by Councilmember Ambrose Schitter, and unanimously approved, it was moved to read the ordinance for one reading only. Thereafter, on motion made by Councilmember Raymond Howard, seconded by Councilmember Ambrose Schitter, and unanimously approved, it was moved to have the ordinance read by title only. The ordinance was so read. Thereafter, upon motion made by Councilmember Thomas Schmidt, seconded by Councilmember Bradley Seger, and unanimously approved, it was moved to pass and adopt Ordinance No. 2005-36. During discussion, City

Attorney Hemmerlein explained that the recommendation came from the Board of Public Works and Safety.

Ordinance No. 2005-37 AN ORDINANCE AMENDING SECTION 6(1) OF ORDINANCE NO. 546, ENTITLED ‘AN ORDINANCE PROVIDING FOR A UNIFORM CODE FOR TRAFFIC UPON THE PUBLIC STREETS OF THE CITY OF JASPER, INDIANA’—STOP INTERSECTIONS DESIGNATED.

Ordinance No. 2005-37 adds stop signs at the St. James Avenue and Liberty Street intersection and the Carter Blvd. at Meridian Road intersection.

Upon motion by Councilmember Randall Buchta, seconded by Councilmember Ambrose Schitter and unanimously approved, it was moved to read the ordinance for one reading only. Thereafter, on motion made by Councilmember Renee Kabrick, seconded by Councilmember Randall Buchta and unanimously approved, it was moved to have the ordinance read by title only. The ordinance was so read. Thereafter, upon motion made by Councilmember Bradley Seger, seconded by Councilmember Raymond Howard, it was moved to pass and adopt Ordinance No. 2005-37. The measure passed 7-0. During discussion, City Attorney Sandra Hemmerlein reported that the recommendation had come from the Board of Public Works and Safety.

Ordinance No. 2005-38 AN ORDINANCE ESTABLISHING AN “ARTS CENTER RENOVATION/EXPANSION FUND”

Ordinance No. 2005-38 establishes a fund to receive donations to be used for future facility improvement, renovation or expansion.

Upon motion by Councilmember Ambrose Schitter, seconded by Councilmember Renee Kabrick and unanimously approved, it was moved to read the ordinance for one reading only. Thereafter, on motion made by Councilmember Renee Kabrick, seconded by Councilmember Thomas Schmidt and unanimously approved, it was moved to have the ordinance read by title only. The ordinance was so read. Thereafter, upon motion made by Councilmember Raymond Howard, seconded by Councilmember Renee Kabrick, it was moved to pass and adopt Ordinance No. 2005-38. The measure passed 7-0. During discussion, City Attorney Sandra Hemmerlein stated that the recommendation came from the Jasper Community Arts Commission.

Ordinance No. 2005-39 AN ORDINANCE ESTABLISHING CONTRIBUTION REQUIREMENTS FOR DEVELOPERS AND NEW USERS OF THE JASPER SEWAGE WORKS.

Ordinance No. 2005-39 allows the funds accumulated in the Plant Expansion and Improvement Fund to be used for the construction of High Pressure Forced Mains.

Upon motion by Councilmember Renee Kabrick, seconded by Councilmember Ambrose Schitter and unanimously approved, it was moved to read the ordinance

for one reading only. Thereafter, on motion made by Councilmember Randall Buchta, seconded by Councilmember Ambrose Schitter and unanimously approved, it was moved to have the ordinance read by title only. The ordinance was so read. Thereafter, upon motion made by Councilmember John Schroeder, seconded by Councilmember Ambrose Schitter, it was moved to pass and adopt Ordinance No. 2005-39. The measure passed 7-0. During discussion, City Attorney Sandra Hemmerlein stated that the recommendation came from the Utility Service Board.

Ordinance No. 2005-40 AN ORDINANCE ANNEXING CERTAIN ADJACENT AND CONTIGUOUS TERRITORY INTO THE CORPORATE LIMITS OF THE CITY OF JASPER, INDIANA. (Brookstone II and III)

Ordinance No. 2005-40 annexes 32.81 acres located adjacent to and south of Brookstone Estates and Diamond Ridge Estates.

The ordinance was introduced upon motion by Councilmember Renee Kabrick, seconded by Councilmember Thomas Schmidt, and unanimously approved, to read the ordinance by title only on first reading. The ordinance was so read. Thereafter, on motion made by Councilmember Bradley Seger and seconded by Councilmember John Schroeder, Ordinance No. 2005-40 was unanimously approved on first reading.

During discussion, City Attorney Sandra Hemmerlein reported that the annexation was 100% petitioned for by both landowners. A public hearing will be held before the next council meeting. A fiscal plan will also be presented at the next council meeting.

Car Tent Sales. Mayor Schmitt reported that there have been several occasions when out-of-the area car dealerships come to Jasper and hold Tent Sales. He said people have nowhere to go if the car they buy at these sales has something wrong with it. He also said people are not properly informed about the financial side of the transaction. He said that Greensburg has an ordinance regarding such sales and thought the council should look at it. Councilmember Renee Kabrick said she had received phone calls concerning furniture sales.

City Attorney Sandra Hemmerlein said she was still researching the issue, but had a concern as to how far the city would take these issues. She advised that the Transient Merchants Ordinance takes care of this kind of issue and that the requirements are covered by state law. She said there is already a mechanism through the Bureau of Motor Vehicles for how this is supposed to work. The Mayor considered this to be a consumer protection issue. He said that the City cannot eliminate competition, but it can protect consumers. Mayor Schmitt commented that he been informed by a State Official that the best way to regulate this is at the local level. The Councilmembers asked the City Attorney to do more research on the subject.

Outside Furnace Units. Mayor Schmitt reported that members of Indiana Department of Environmental Management (IDEM) were encouraging municipalities to look at regulating outdoor furnaces or outdoor heating units

because of air quality issues. He said IDEM will probably have some regulation but that could take two years to take effect. Mayor Schmitt said Huntingburg is looking into this issue and Petersburg has already enacted a ban on such units. Councilmember Thomas Schmidt asked how many units were presently in the city. Mayor Schmitt surmised that there were about four or five. Councilmember Raymond Howard commented that he had read if units are installed and used properly, they can meet EPA emission guidelines. Councilmember Renee Kabrick was concerned that given Jasper's current air quality status, some regulating should be considered. Mayor Schmitt requested that the Councilmembers read the information in their packets on the subject.

Adjournment

There being no further business to come before the board, a **motion** was made by Councilmember Renee Kabrick and seconded by Councilmember Thomas Schmidt to adjourn the meeting. The motion carried unanimously and the meeting adjourned at 9:35 p.m.

**William J. Schmitt, Mayor
Presiding Officer**

ATTEST:

Juanita S. Boehm, Clerk-Treasurer

Cynthia Kluemper, Recording Secretary